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18 October 1957

MEMORANDUM FOR: Chief, Procurement Division, Office of Logistics

SUBJECT: Inquiries Re: (1) Continuance of Work on Contracts Involving Legend Appropriations and (2) The Use of Expired Funds

REFERENCE: (a) Memorandum to Chief, Finance Division, dated 9 October 1957
(b) Memorandum to Chief, Procurement Division, dated 3 August 1957

1. The questions raised in paragraph 2b of reference (a) are discussed in the following paragraphs in the order presented.

a. In the case of the R & D contract in question, we understand that amendment of the contract to increase the allowable costs thereunder is necessary because original cost estimates have proved to be inaccurate. Further, the amendment does not contemplate or authorize any change in the original scope of the contract.

In the above circumstances, we are confronted with the problem of adjusting the amount of an obligation rather than creating a new obligation. Such action is considered to be entirely legal and proper, as long as funds are available to meet the adjusted amount of the obligation, even though the appropriation against which the obligation was established is no longer available for new obligations.

Determinations in cases of this kind become more troublesome in instances such as the current case where legend year funds are involved.

Since the issuance of reference (b), however, the provisions of Public Law 798, 85th Congress, have been implemented. Under the terms of this law, each agency is granted authority to retain funds necessary to pay obligations outstanding against lapsing appropriations.

Under procedures established for the Agency, each allottee is required to identify and support obligations against lapsing appropriations for which funds are required to be retained. The contracting office is protected, insofar as availability of funds is concerned, if he obtains and relies on certification of availability of funds executed by the responsible allottee. Since such certification has been furnished in this case, and in line with the understanding expressed above, it is

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our view that the proposed amendment is proper for execution insofar as the fund aspects are concerned.

b. The principles indicated above would be generally applicable to other programs initiated under similar circumstances during any Fiscal Year, i.e., funds of the year against which original contract obligations were incurred may be utilized to liquidate upward adjustments of obligations in any case wherein:

- (1) the scope of the contract is not changed,
- (2) the increased obligation represents, in effect, correction of an obligation previously established on an estimated basis;
- (3) the responsible allottee certifies that funds of the fiscal year concerned are available.

c. Under similar conditions and circumstances, obligations established on an estimated basis as a result of issuance of Letters of Intent may be adjusted upward and the increased amount may be liquidated from funds available for the fiscal year during which the program was initiated.

d. The above comments have been predicated on circumstances wherein the responsible allottee is in a position to certify availability of funds of the year in question. In the event that the allottee cannot make such certification for the reason that the increased amount of obligation was not anticipated before the year in question was closed, or the funds have become exhausted, the Agency will have to look to other available funds to satisfy the proper obligations arising from the contract. In such instances, although the principle of adjustment of obligation remains unchanged, the allottee and/or contracting officer should clear availability of funds with the Budget Division, Office of Comptroller, prior to initiating contract amendments necessary to recognize the revised amount of obligation. Such procedure will assure availability of funds and simplify ultimate payment of the obligation.

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CONCURRENCE:

E. R. BAURHORN
Comptroller

Chief, Finance Division

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